

**Supplemental Letter of Findings: 02-20182132
Corporate Income Tax
For the Years 2014 and 2015**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Supplemental Letter of Findings.

HOLDING

Indiana Service Station failed to meet its statutory burden of establishing that the Department's assessment of additional corporate income tax was wrong; the Department noted Service Station's absence of records and the audit's efforts expended in arriving at its original conclusions and declined to "second-guess" those decisions.

ISSUES

I. Corporate Income Tax - Income from the Sale of Fuel.

Authority: IC § 6-3-1-3.5; IC § 6-3-1-3.5(b); IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that the Department of Revenue overstated the amount of its income subject to Indiana's corporate income tax because the Department included in its calculation sales tax collected on its customers' fuel purchases.

II. Corporate Income Tax - Calculations.

Authority: IC § 6-8.1-5-1(c); IC § 6-8.1-5-4(a); IC § 6-8.1-5-4(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer states that the Department erred in calculating its income by failing to account for discounts allowed its customers, accounts receivable, and various offsetting expenses.

STATEMENT OF FACTS

Taxpayer is an Indiana corporation which operates an automobile service station. Taxpayer provides its customers two metered fuel pumps which dispense fuel 24 hours each day. Each of the pumps dispenses regular unleaded gasoline and diesel fuel.

The service station also features three vehicle service bays which make it possible to provide automotive maintenance and repair services. Taxpayer also sells prepackaged snacks and soft drinks.

Taxpayer is registered for Indiana sales, withholding, tire tax, and corporate income tax. The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's business records including sales tax returns, service invoices, and register tapes. According to the Department's audit report, Taxpayer reported its monthly sales and tax due on form Indiana ST-103MP ("Indiana Metered Pump Sales and Use Tax Return").

The Department found "discrepancies between [Taxpayer's] reported sales and the records maintained by [T]axpayer." In completing the ST-103MP forms, "Rather than including the sum of all taxable and non-taxable sales in the total sales in the calculation of the line one amount on the ST-103MP form taxpayer only reported the sum of its taxable sales."

[T]axpayer did not keep a full record of its taxable sales calculations that it used to enter the amounts on line one of its ST-103MP forms. Additionally, the amounts for taxable sales on the available daily register tapes

did not fully reconcile to the ST-103MP line one amounts. The [T]axpayer's misreported line one amount on its ST-103MP resulted in additional errors on its ST-103MP form, specifically, the understatement of taxable sales.

According to the audit report, Taxpayer's representative admitted that errors were made on the ST-103MP forms and also agreed that "[T]axpayer also misreported the sales tax due because it did not remit all of the sales tax it had collected during the audit period."

In the face of what it determined were basic reporting errors, the Department's audit relied on Taxpayer's "sales totalizer." The audit report explains that the "sales totalizer" is the line item calculation found on Taxpayer's cash register tapes ("z-tapes"). The audit concluded that these totals "[were] the most reliable method for tracking the [T]axpayer's total revenue during the sample period."

The audit resulted in an assessment of additional sales and corporate income tax. Taxpayer disagreed with both the sales and income tax assessments and submitted a protest to that effect. Letters of Finding (04-20181178; 02-20181179) were issued May 17, 2018, addressing separately the sales and income tax assessments. After considering the facts and relevant law, the Letter of Findings addressing Taxpayer's corporate tax objections, (02-20181179), concluded as follows:

[T]he Department is unable to agree that the spreadsheet, written explanations, and, financial statements are sufficient to meet Taxpayer's statutory burden of establishing that the assessment was wrong. IC § 6-8.1-5-1(c). Although Taxpayer provided financial records purporting to correct the multiple errors and omissions embedded in the records originally reviewed, there are no verifiable source documents which allow for a specific adjustment of the original income tax assessment as required under IC § 6-8.1-5-4(a).

Taxpayer disagreed with the results of the corporate income tax Letter of Findings and requested a rehearing. That request was granted and an administrative rehearing was conducted during which Taxpayer's representative explained the basis for the rehearing request. This Supplemental Letter of Findings results. Taxpayer did not object to the conclusions set out in the sales tax Letter of Findings (04-20181178).

I. Corporate Income Tax - Income from the Sale of Fuel.

DISCUSSION

Taxpayer states that the Department made a fundamental error in accounting for income attributable to its fuel sales. Taxpayer states that the Department counted both the money from the fuel sales and the sales tax attributable to those sales. For illustrative purposes, Taxpayer sold \$1.00 of fuel, but the Department counted the \$1.00 as money subject to corporate income tax, when - in fact - only \$.93 was subject to tax and the other \$.07 constituted sales tax collected from the customer and not subject to income tax.

The issue is whether the Taxpayer can establish that the Department's audit made such a fundamental error in calculating the amount of money subject to Indiana's corporate income tax.

The audit report cited to IC § 6-3-1-3.5 as the basis for the income tax assessment. The statute provides in small part:

In the case of corporations, the same as "taxable income" (as defined in Section 63 of the Internal Revenue Code) adjusted as follows:

- (1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.
- (2) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 170 of the Internal Revenue Code.
- (3) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States.

IC § 6-3-1-3.5(b).

As with any assessment of tax, it is the Taxpayer's responsibility to establish that the income tax assessment was incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests

with the person against whom the proposed assessment is made." See also *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

In this case, it is helpful to establish the context in which the original audit took place. Taxpayer's representative repeatedly raised the issue under consideration here during the course of the original audit. While the Department's audit considered the question, Taxpayer failed to provide anything to verify Taxpayer's conclusion. Although Taxpayer maintained certain books and records, the Taxpayer's representative prepared "a separate set of books based on the information . . . which is used to file the income returns." However, Taxpayer's representative admitted that the second set of books and records "does not include all transaction activity and that [the representative] is unaware of many of the [T]axpayer's records."

Taxpayer's representative asserted that Taxpayer had "no unreported income" but "regarding the in-house accounts on retail fuel sales customers . . . I have no proof."

The Department's audit began September 2016 and eventually concluded December 2017. In the span of those fourteen months, the audit records are replete with notes that Taxpayer failed to provide the requested records. In instance, the representative simply provided Taxpayer's computer tower and "indicated that all of the [T]axpayer's records were in the computer tower." However, the Department's representative "was unable to access any files in the computer."

Although the Department's audit accessed the available daily register ("Z") tapes, the audit was unable to "verify that all sales recorded on service invoices were recorded on the Z-Tapes." Without the ability to verify those sales, the audit report indicates that the sales amounts "were completed using the data provided that was determined to be the most accurate and complete."

Despite the apparent difficulties in arriving at the best and most accurate amount of income, the audit report indicates that Taxpayer - and its representative - were repeatedly provided opportunities to explain and resolve any objections to the audit's ongoing progress and its preliminary and final findings.

As to the issue raised here in Part I, Taxpayer's objection is groundless because the audit report plainly indicates that the fuel sales tax amounts were removed from the final calculation of income subject to Indiana's tax. The Department will not "second-guess" the audit findings on this issue and overturn a calculation which was considered during the course of the 14 month audit.

Taxpayer has not met its burden under IC § 6-8.1-5-1(c) of establishing that the income tax assessment in this regards was "wrong."

FINDING

Taxpayer's protest is respectfully denied.

II. Corporate Income Tax - Calculations.

DISCUSSION

Taxpayer states that the audit made three errors (or oversights) which inflated the calculation of Taxpayer's corporate income tax.

- Taxpayer states that the calculation of income subject to tax should be reduced by approximately \$1,000 because that amount represents "discount's for prompt payment of [customers'] bill[s],"
- Taxpayer states that the calculation of income subject to tax should be reduced by approximately \$8,000 because the \$8,000 was included in the first audit year's records as "accounts receivable" but included in the subsequent year as having been paid. In other words, Taxpayer believes the \$8,000 was double-counted.
- Taxpayer states that the calculation of income subject to tax should be reduced because the Department's audit failed to account for offsetting expenses. In particular, Taxpayer "subcontracted" to other repair shops work performed on vehicle alignments and for towing services. Taxpayer was paid by its customers for this work but - according to Taxpayer - the Department failed to account for the offsetting expenses incurred in paying the subcontractor. For example - and for illustrative purposes - Taxpayer was paid \$100 by a

customer whose car was towed. The Department included the \$100 as Taxpayer's income but failed to offset the \$100 income with the \$100 paid to the unrelated service company which actually performed the service.

As pointed out in Part I above, it remains Taxpayer's responsibility to establish that the income tax assessment was incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. As pointed out in Part I above, burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." See also *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

The Department again notes that these three specific putative errors were raised by Taxpayer's representative during the course of the 14 month audit. The audit made note of those specific objections and responded in writing to Taxpayer's representative.

- We don't know how many commercial accounts were operated.
- We don't have any documentation verifying the number of commercial accounts.
- We don't have any of the ledgers or accounts that these transactions were tracked through.
- We don't have any ledgers or accounts which verify these supposed transactions were included in the [T]axpayer's sales records, or recorded on the Z-tapes, or in the data [T]axpayer sent [the representative].
- We don't have any payment records (receipts or checks) for the commercial accounts.
- [We have] not been provided any copies of the [T]axpayer's electronically kept books, ledgers or accounts.

It should be pointed out that, "Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for the tax by reviewing those books and records." IC § 6-8.1-5-4(a). In addition, IC § 6-8.1-5-4(c) provides that, "A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times." IC § 6-8.1-5-4(c).

Again, these three specific objections were raised during the course of the audit and the record establishes that the objections were considered and addressed. Again, the Department here rejects Taxpayer's invitation to second guess the word of the audit based on documentation which only represents one portion of the transactions at issue. There is insufficient evidence to overturn or modify any portion of the audit's conclusions.

FINDING

Taxpayer's protest is respectfully denied.

November 27, 2018

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